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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIA TERESA POSADAS
PAGUNSAN,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71429

Agency No. A71-571-698

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 4, 2006**
Pasadena, California

Before: HAWKINS and PAEZ, Circuit Judges, and WAKE, *** District Judge.

Maria Teresa Posadas Pagunsan, a native and citizen of the Philippines,

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Neil V. Wake, United States District Judge for the District of Arizona, sitting by designation.

petitions for review of the decision of the Board of Immigration Appeals (“BIA”) dismissing her appeal from the immigration judge’s (“IJ”) denial of her application for asylum and withholding of removal.¹ We have jurisdiction pursuant to 8 U.S.C. § 1252. The immigration judge based the denial of relief on an adverse credibility finding. The BIA affirmed the adverse credibility finding and held, in the alternative, that Pagunsan failed to meet her burden of proof for asylum. *Id.* § 1158. Because we hold that these grounds for denying relief are not supported by substantial evidence, we grant the petition for review and remand.

“Where, as here, the BIA adopts the IJ’s decision while adding its own reasons, we review both decisions.” *Siong v. INS*, 376 F.3d 1030, 1036 (9th Cir. 2004) (internal quotation marks omitted). We review adverse credibility determinations for substantial evidence. *Gui v. INS*, 280 F.3d 1217, 1225 (9th Cir. 2002). In this case, the immigration judge relies primarily on discrepancies between Pagunsan’s 1991 asylum application and her updated 2000 asylum application.² Because a fair reading of Pagunsan’s 1991 application compels the

¹The IJ also rejected Pagunsan’s claim for relief under the Convention Against Torture (“CAT”). Pagunsan did not appeal the denial of CAT relief to the BIA or to this court.

²The IJ noted several other factors suggesting Pagunsan lacked credibility but concluded that these factors were insufficient to justify an adverse credibility finding, stating explicitly “But aside from *all of that*, of course, *these are all* minor

conclusion that Pagunsan did in fact raise the basis for her fear of the New People's Army ("NPA") in her original 1991 application, substantial evidence does not support an adverse credibility finding on this basis. *See Smolniakova v. Gonzales*, 422 F.3d 1037, 1044-48 (9th Cir. 2005).³

things. I would not make my decision just based upon that. (emphasis added).” We take the IJ at her word that she would not have made an adverse credibility finding based on “all” of the “minor” reasons that she articulated prior to her discussion of the alleged discrepancies between Pagunsan’s 1991 and 2000 applications. We therefore do not address these factors. *See Marcos v. Gonzales*, 410 F.3d 1112, 1116 (9th Cir. 2005) (“Our review focuses only on the actual reasons relied upon by the IJ.”); *id.* at 1118 (“Because the IJ expressed no further concerns, and the only *explicitly articulated* reasons rested on impermissible factors, then we conclude from the IJ’s opinion that [the petitioner] was an otherwise credible witness.” (internal quotation marks omitted) (alterations in original)).

³The dissent relies on alleged discrepancies between Pagunsan’s 1991 and 2000 applications. The dissent’s approach is inconsistent with our case law. Pagunsan filed her 1991 application pro se, whereas she filed her 2000 application with the assistance of counsel. As we explained in *Smolniakova*, an IJ may not base her adverse credibility determination on a finding that facts not inconsistent with the applicant’s later, more detailed testimony were omitted from an asylum application, especially when that application was filed pro se. 422 F.3d at 1045. Rather, the IJ is to read asylum applications filled out without assistance of counsel “charitably.” *Id.* “[Pagunsan]’s failure to file an application form that was not as complete as might be desired cannot, without more, properly serve as the basis for a finding of a lack of credibility.” *Aguilera-Cota v. INS*, 914 F.2d 1375, 1382 (9th Cir. 1990); *see Singh v. Ashcroft*, 301 F.3d 1109, 1112 (9th Cir. 2002) (explaining the difference between inconsistencies and omissions and holding that the omission of facts from a petitioner’s earlier statements cannot be the basis for an adverse credibility finding); *Lopez-Reyes v. INS*, 79 F.3d 908, 911 (9th Cir. 1996) (“It is well settled that an applicant’s testimony is not per se lacking in credibility simply because it includes details that are not set forth in the asylum application.”).

We also review for substantial evidence the BIA's finding that Pagunsan failed to demonstrate her eligibility for asylum. *See id.* at 1044. Pagunsan's testimony, taken as credible, definitively establishes that the NPA targeted her, at least in part, for opposing their political cause. *See Tarubac v. INS*, 182 F.3d 1114, 1118-19 & n.4 (9th Cir. 1999). It also establishes that Pagunsan has a subjective fear of future persecution. Moreover, while Pagunsan was never physically harmed, we have consistently held that threats of death by an organization capable of carrying them out are sufficient in and of themselves to constitute evidence of an objectively reasonable fear of future persecution. *See, e.g., Canales-Vargas v. Gonzales*, 441 F.3d 739, 743-44 (9th Cir. 2006); *Lim v. INS*, 224 F.3d 929, 936-37 (9th Cir. 2000). Because Pagunsan was threatened on multiple occasions, the most notable involving the brutal murder of a close family friend in an effort to send a "message" to her, and placed on the NPA's death list, we are compelled to conclude that Pagunsan has established a well founded fear of future persecution.

Accordingly, we grant the petition, reverse the adverse credibility determination, and hold that Pagunsan has established a well founded fear of future persecution based on a protected ground (i.e., political opinion). On remand, the BIA should determine Pagunsan's eligibility for asylum and withholding of removal, accepting her testimony as credible and as establishing a well founded

fear of future persecution.

Petitioner's Request to Take Judicial Notice is **DENIED**.

We **GRANT** the petition for review and **REMAND** for further proceedings.